

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CHARLES EDWARD HUBBARD,)

Plaintiff)

vs.)

LARRY AMERSON, et al.,)

Defendants)

Case No. 2:09-cv-01594-KOB-HGD

MEMORANDUM OF OPINION

The magistrate judge filed a report and recommendation on March 16, 2011, recommending that (1) the complaint against defendant Ray be dismissed pursuant to Fed.R.Civ.P. 4(m); (2) the complaint against defendants Amerson, Smith, and Cobb be dismissed pursuant to 42 U.S.C. § 1997e(a) for lack of exhaustion of administrative remedies; (3) as to defendant Means, the special report (Doc. 24) be treated as a motion for summary judgment and, as such, be granted; and (4) this case be closed. No objections have been filed by any party.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the court is of the opinion that the

magistrate judge's report is due to be and is hereby ADOPTED and his recommendation is ACCEPTED.

The court finds as follows:

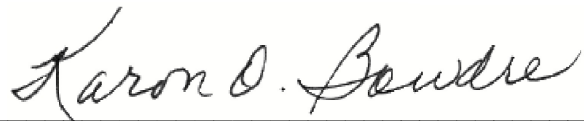
1. The court EXPRESSLY FINDS that the complaint against defendant Ray is due to be DISMISSED WITHOUT PREJUDICE pursuant to Fed.R.Civ.P. 4(m);

2. The court EXPRESSLY FINDS that no genuine issues of material fact exist as to the plaintiff's medical claims against defendants Amerson, Smith, and Cobb based on the plaintiff's failure to exhaust his administrative remedies. Therefore, defendants Amerson, Smith, and Cobb's motion for summary judgment is due to be GRANTED and the plaintiff's claims against defendants Amerson, Smith, and Cobb are due to be DISMISSED WITHOUT PREJUDICE;

3. The court EXPRESSLY FINDS that no genuine issues of material fact exist as to the plaintiff's excessive force claims against defendant Means. Therefore, defendant Means' motion for summary judgment is due to be GRANTED and all claims against Defendant Means are due to be DISMISSED WITH PREJUDICE.

An appropriate order will be entered.

DONE this 31st day of May, 2011.

A handwritten signature in cursive script, reading "Karon O. Bowdre".

KARON OWEN BOWDRE
UNITED STATES DISTRICT JUDGE